

April 22, 2004

IMMEDIATE RELEASE

THIS IS NOT AN OFFICIAL STATEMENT
OF THE COURT, BUT IS SOLELY FOR
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IN THE SUPREME COURT OF THE STATE OF IDAHO
Docket No. 24373/26927

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	Docket No. 24373
)	
v.)	2004 Opinion No. 40
)	
FARON E. LOVELACE,)	Filed: April 22, 2004
)	
Defendant-Appellant.)	Frederick C. Lyon, Clerk
)	
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FARON EARL LOVELACE,)	
)	
Petitioner-Appellant,)	Docket No. 26927
)	
v.)	
)	
STATE OF IDAHO,)	
)	
Respondent.)	

Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. James F. Judd, District Judge.

Conviction for first-degree murder, affirmed. Sentence of death for first-degree murder, vacated and remanded.

Molly J. Huskey, State Appellate Public Defender; Mark James Ackley, Deputy State Appellate Public Defender, Boise, for appellant. Mark James Ackley argued.

Hon. Lawrence G. Wasden, Attorney General; L. LaMont Anderson, Deputy Attorney General, Boise, for respondent. L. LaMont Anderson argued.

On rehearing, the Idaho Supreme Court again concluded that Lovelace should be resentenced and remanded the case to the district court. The Court reaffirmed

all decisions made in *State v. Lovelace*, previously issued on July 23, 2003, which are not mentioned in the rehearing opinion.

The Court concluded the Lovelace's waiver of counsel met constitutional standards. The Court also concluded that the district court's denial of Lovelace's request for an investigator was not error. Specifically addressing the ramifications of resentencing, the Court held that because Lovelace was never acquitted of the greater offense of first-degree murder with aggravating circumstances, double jeopardy does not bar resentencing. The Court ruled that Idaho's revised death penalty statutes under which Lovelace will be resentenced do not violate the Ex Post Facto Clause of the federal constitution. Further, the Court declined to apply a harmless error analysis in this case because Lovelace was completely deprived of his right to have a jury determine the existence of aggravating factors sufficient to impose a sentence of death. In order to comply with the Eighth Amendment, the Court directed the district court on remand to exclude victim impact statements calling for the death penalty, pursuant to *Booth v. Maryland*, 482 U.S. 496 (1987) and *Payne v. Tennessee*, 501 U.S. 808 (1991).